



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX CHECK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing was scheduled to deal with a landlord's Application for Dispute Resolution, as amended, for an Order of Possession and Monetary Order for unpaid rent. The tenants did not appear at the hearing. The landlord testified that the original Application for Dispute Resolution and the amended Application for Dispute Resolution were sent to each tenant at the rental unit on May 20, 2014 and June 20, 2014, respectively. The landlord testified that the hearing documents sent to the tenants via registered mail were accepted or picked up by the tenants on May 22, 2014 and June 23, 2014, respectively. The landlord orally provided the registered mail tracking numbers as proof of service. I was satisfied the tenants have been notified of this proceeding and I continued to hear from the landlord without the tenants present.

At the commencement of the hearing, the landlord stated the tenants have satisfied the rental arrears and paid for use and occupancy of the unit until July 31, 2014. As such, the landlord withdrew the request for a Monetary Order. The landlord also withdrew the request for recovery of the filing fee. The landlord requested that an Order of Possession effective July 31, 2014 be provided.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The tenancy commenced in February 2001 with a former property manager. As of May 1, 2006 the current landlord took over management of this property and at that time the tenants were paying rent of \$700.00 per month. The current landlord has issued Notices of Rent Increase since taking over as property manager with the most recent Notice of Rent Increase bringing the monthly rent to \$841.00 starting February 1, 2013. The rent is due on the 1<sup>st</sup> day of every month.

The tenants failed to pay the monthly rent for May 2014 and the landlord personally served the male tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on May 8, 2014 as evidenced by the male tenant's signature on the Proof of Service. The 10 Day Notice indicates rent of \$976.00 as of May 1, 2014 and has a stated effective date of May 18, 2014. The amount of \$976.00 includes rent for May 2014 plus shortfalls in rent payments in preceding months.

After filing the original Application for Dispute Resolution, the tenants presented payment of \$976.00 to the landlord on May 26, 2014 which the landlord accepted for use and occupancy only.

The tenants continue to reside in the rental unit and have presented to the landlord payment of monies for June and July 2014 which the landlord has accepted for use and occupancy only. In light of the payment for use and occupancy for July 2014 the landlord requested an Order of Possession effective July 31, 2014.

Documentary evidence provided by the landlord included: the tenancy agreement; Notices of Rent Increase issued since the current landlord took over management of the property; ledgers showing rent charges and payments for several years; the 10 Day Notice; and, Proof of Service of the 10 Day Notice.

### Analysis

When a tenant fails to pay rent due to the landlord, the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

Upon receiving a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord served the tenants with a 10 Day Notice to End Tenancy on May 8, 2014. Since the tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on May 18, 2014. I am further satisfied that such sequent payments made by the tenants were accepted for use and occupancy only did not reinstate the tenancy. Therefore, I find the landlord is entitled to regain possession of the rental unit.

Since the landlord has accepted payment for use and occupancy for the months of June and July 2014, and as requested by the landlord, I provide to the landlord with this decision an Order of Possession that is effective July 31, 2014.

Conclusion

The landlord has been provided an Order of Possession effective July 31, 2014 to serve and enforce as necessary.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 09, 2014

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Residential Tenancy Branch

